

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

Knife River Midwest, LLC)
900 Montgomery St.)
Decorah, Iowa 52101)

Respondent)

Proceedings under Section 309(a) of the)
Clean Water Act, 33 U.S.C. § 1319(a))

) Docket No. CWA-07-2009-0058

) FINDINGS OF VIOLATION,
) ORDER FOR COMPLIANCE

Preliminary Statement

1. The following Findings of Violation and Order for Compliance (Order) are made and issued pursuant to the authority of Section 309(a)(3) of the Clean Water Act (CWA), 33 U.S.C. § 1319(a)(3). This authority has been delegated by the Administrator of the United States Environmental Protection Agency (EPA) to the Regional Administrator, EPA, Region 7 and further delegated to the Director of Region 7's Water, Wetlands and Pesticides Division.

2. Respondent is Knife River Midwest, LLC, a limited liability company registered under the laws of the State of Iowa and authorized to conduct business in the State of Iowa.

Statutory and Regulatory Framework

3. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 402 of the CWA, 33 U.S.C. § 1342. Section 402 of the CWA, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

4. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

5. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of storm water. Section 402(p) of the CWA, requires, in part, that a discharge of storm water associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA.

6. Pursuant to Section 402(p) of the CWA, EPA promulgated regulations setting forth the NPDES permit requirements for storm water discharges at 40 C.F.R. § 122.26.

7. 40 C.F.R. § 122.26(a)(1)(ii) and 122.26(c) require dischargers of storm water associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated storm water general permit.

8. 40 C.F.R. § 122.26(b)(14)(vi) defines “storm water discharge associated with industrial activity,” in part, as “the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant.” A facility classified as Standard Industrial Classification 14 is considered to be engaging in “industrial activity” for purposes of paragraph (b)(14)(iii).

9. The Iowa Department of Natural Resources (IDNR) is the state agency with authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

10. The IDNR implemented a General Permit for the discharge of storm water under the NPDES, Permit No. 3 on October 1, 2007. The permit governs stormwater discharges associated with industrial activity for asphalt plants, concrete batch plants, crushing plants and construction sand and gravel facilities.

Factual Background

11. Respondent corporation is a “person” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

12. At all times relevant to this action, Respondent was the owner and/or operator of an industrial facility engaged in the manufacturing or processing of an asphalt plant, concrete batch plant, crushing plants and/or construction sand and gravel facility known as Knife River Midwest, LLC located at 900 Montgomery Street, Decorah, Iowa (the Site) with a SIC code of 1442.

13. Storm water, snow melt, surface drainage, and runoff water leave Respondent’s facility and flow into the Upper Iowa River. The runoff and drainage from Respondent’s facility is “storm water” as defined by 40 C.F.R. § 122.26(b)(13).

14. Storm water contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

15. The Site has “storm water discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

16. Respondent discharges pollutants into “navigable waters” as defined by CWA Section 502, 33 U.S.C § 1362.

17. Storm water runoff from Respondent’s industrial activity results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

18. Respondent’s discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(iii), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

19. On or about September 12, 2007, Respondent resubmitted a Notice of Intent (NOI) for coverage under Iowa General Permit No. 3.

20. Permit number 3994-3830 for the asphalt plant and Permit number 3484-3327 for the concrete plant were reissued to Respondent and will expire on October 1, 2012.

21. On August 7, 2008, EPA performed an inspection of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 318(a). The purpose of the inspection was to evaluate compliance with the CWA.

Findings of Violation

Failure to Install Best Management Practices

22. The facts stated in paragraphs 11 through 21 above are herein incorporated.

23. General Permit No. 3, Part III, Section C Storm Water Pollution Plans requires that the plan identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. The plan shall identify and ensure implementation of practices which will be used to reduce pollutants in storm water discharges.

24. EPA’s inspection on August 7, 2008, revealed a pile of recycled asphalt adjacent to the north pond without any management practices in place to prevent run-off of the asphalt pile.

25. EPA's inspection on August 7, 2008, revealed a concrete washout area on the south side of the North Pond. Water was flowing from this area into the North Pond. There were two discharges to the North Pond. The SWPPP did not describe BMPs and maintenance for the washout area. BMPs were not present.

Failure to Conduct Required Sampling

26. General Permit No. 3, Part V Monitoring and Reporting Requirements identifies the monitoring and reporting required of permit holders and the frequency of such monitoring and reporting.

27. General Permit No. 3; Part V. 1. A. states that Asphalt Plants and Rock Crushing Plants must monitor for total suspended solids (TSS) (mg/L); any pollutant limited in an effluent guideline to which the facility is subject; the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and provide an estimate of the total volume (in gallons) of the discharge sampled.

28. General Permit No. 3, Part V.1.B states that sampling shall be conducted at least annually (1 time per year) for each facility except as provided by Part V.B.4.

29. General Permit No. 3, Part V.1.C in the permit states that a minimum of one grab sample shall be taken and includes other requirements for sample collection.

30. EPA's inspection on August 7, 2008, revealed that samples have not been collected for the asphalt plant and rock crushing plant for at least the last two years.

31. General Permit No. 3, Part V. B. 2 states that Concrete Batch Plants must monitor for TSS (mg/L); total recoverable iron (mg/L); any pollutant limited in an effluent guideline to which the facility is subject; the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and provide an estimate of the total volume (in gallons) of the discharge sampled.

32. General Permit No. 3, Part V.1.B states that sampling shall be conducted at least annually (1 time per year) for each facility except as provided by V.B.4.

33. General Permit No. 3, Part V.1.C states that a minimum of one grab sample shall be taken and includes other requirements for sample collection.

34. EPA's inspection on August 7, 2008, revealed that samples have not been collected for the concrete batch plant for at least the last two years.

35. The Respondent's failure to conduct sampling required by the permit is a violation of the permit and the CWA.

Retention of Records

36. General Permit No. 3, Part V.E.1 states that the permittee shall retain a copy of the stormwater pollution prevention plan, records of all monitoring information, copies of all reports required by the permit, and records of all data used to complete the NOI to be covered by this permit for the duration of the permit or for a period of at least three years from the date of the measurement, report, inspection, etc.

37. EPA's inspection on August 7, 2008, revealed that the records required to be kept have not been kept for at least two years.

Failure to Conduct and Record Visual Inspections

38. General Permit No. 3, Part III.C.4.C requires that qualified personnel shall inspect designated equipment and plant areas at appropriate intervals specified in the plan but no less than once a year.

39. General Permit No. 3, Part III.C.4.C (1) requires that material handling areas and other potential sources of pollution identified in the plan in accordance with Part III.C.4.A of this permit shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Structural storm water management measures, sediment and control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

40. General Permit No. 3, Part III.C.4.C (3) requires that a report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWPPP, and actions taken in accordance with Part III.C.4.C(2) of the permit shall be made and retained as part of the SWPPP for at least three years. The report shall be signed in accordance with Part VI.G of the permit.

41. EPA's inspection on August 7, 2008, revealed that the Respondent failed to conduct and document visual inspections of the Asphalt Plant and Batch Plant as required by the permit for a period of at least two years.

Inadequate SWPPP and Failure to Update the SWPPP

42. General Permit No. 3, Part III.C.4.B states, "Each facility covered by this permit shall develop a description of stormwater management controls appropriate to the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of stormwater management controls shall address the following minimum components, including a schedule for implementing such controls."

43. The SWPPP available for review during the inspection contained a list of the non-structural controls and practices but did not contain documentation that the controls had been implemented.

44. General Permit No. 3, Part III.C.4.B(6) "Stormwater Management" states, "The plan shall contain a narrative description of the appropriateness of traditional stormwater management practices (practices other than those which control the source of pollutants). Based on an assessment of the potential of various sources at the site to contribute pollutants to stormwater discharges associated with industrial activity the plan shall provide that measures determined to be reasonable and appropriate shall be implemented and maintained."

45. The SWPPP available for review during the inspection did not describe berms along the river even though the berms were present. Furthermore, the plan did not describe distances of stockpiles from the ponds and the inspector observed one stockpile of asphalt on the edge of the north pond.

46. General Permit No. 3, Part III.C.4.B(7) "Sediment and Erosion Prevention" states, "The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify measures to limit erosion."

47. The SWPPP available for review during the inspection did not address areas on the site which have a high potential for erosion nor did it identify measures to limit erosion. The inspector observed areas on the site that have steep slopes (stockpiles) and areas adjacent to the Upper Iowa River. These areas should have been addressed in the SWPPP.

48. General Permit No. 3, Part III.C.4.B.(9) "Record Keeping and Internal Reporting Procedures" states, "Incidents such as spills, or other discharges, along with other information describing the quality and quantity of stormwater discharges shall be included in the records. Inspection and maintenance activities shall be documented and recorded."

49. The SWPPP available for review during the inspection and conversation with the site quality control manager revealed that the facility had no records of spills or where they had occurred.

50. The SWPPP failures identified above are violations of the permit held by the Respondent and of the CWA.

Order For Compliance

51. Based on the Factual Background and Findings of Violation set forth above, and pursuant to the authority of Sections 308(a) and 309(a)(3) of the CWA, 33 U.S.C. §§ 1318(a) and 1319(a)(3), Respondent is hereby ORDERED to take the actions described in paragraphs 52 through 54.

52. Within thirty (30) days of the Effective Date, as defined in Paragraph 62 herein, Respondent shall take all corrective action that is necessary to correct the deficiencies, eliminate and prevent recurrence of the violations cited in this Order and to come into compliance with all of the applicable requirements of its Permit. A report describing the steps taken to achieve compliance with the permits shall be submitted in accordance with Paragraphs 56 and 57, below by the thirtieth (30th) day following the effective date of the Order.

53. Within 45 days of the Effective Date as defined in Paragraph 62, herein, Respondent shall thoroughly revise the SWPPPs for each permit. A copy of the revised SWPPPs shall be submitted in accordance with Paragraphs 56 and 57, below.

54. From the Effective Date, as defined in Paragraph 62 herein, until terminated by EPA, the Respondent shall submit annually to EPA, with a copy to IDNR, all monitoring and sampling information conducted as required by General Permit No. 3, during the year. Copies of the monitoring and sampling conducted shall be submitted in accordance with Paragraphs 56 and 57, below.

Certification

55. Each submittal to EPA pursuant to the requirements of this Order shall include a written statement by Respondent signed by a principle executive officer or a ranking elected official, or by a duly authorized representative of that person, that contains the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Submissions

56. All documents required to be submitted to EPA by this Order, shall be submitted by mail to:

Ms. Cynthia Sans
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency - Region 7
901 North Fifth Street
Kansas City, Kansas 66101.

57. A copy of documents required to be submitted to IDNR by this Order, shall be submitted by mail to:

Mr. Joe Sanfilippo
Iowa Department of Natural Resources
909 West Main Street, Suite 4
Manchester, Iowa 52057

General Provisions

Effect of Compliance with the Terms of this Order for Compliance

58. Compliance with the terms of this Order shall not relieve Respondent of liability for, or preclude EPA from, initiating an administrative or judicial enforcement action to recover penalties for any violations of the CWA, or to seek additional injunctive relief, pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

59. This Order does not constitute a waiver or a modification of any requirements of the CWA, 33 U.S.C. § 1251 *et seq.*, all of which remain in full force and effect. EPA retains the right to seek any and all remedies available under Section 309(b), (c), (d) or (g) of the Act, 33 U.S.C. § 1319(b), (c), (d) or (g), for any violation cited in this Order. Issuance of this Order shall not be deemed an election by EPA to forgo any civil or criminal action to seek penalties, fines, or other appropriate relief under the CWA for any violation whatsoever.

Access and Requests for Information

60. Nothing in this Order shall limit EPA's right to obtain access to, and/or to inspect Respondent's facility, and/or to request additional information from Respondent, pursuant to the authority of Section 308 of the CWA, 33 U.S.C. § 1318 and/or any other authority.

Severability

61. If any provision or authority of this Order, or the application of this Order to Respondent, is held by federal judicial authority to be invalid, the application to Respondent of the remainder of this Order shall remain in full force and effect and shall not be affected by such a holding.

Effective Date

62. The terms of this Order shall be effective and enforceable against Respondent upon the date signed by the Director, Water, Wetlands and Pesticides Division, EPA, Region 7.

Termination

63. This Order shall remain in effect until a written notice of termination is issued by an authorized representative of the EPA. Such notice shall not be given until all of the requirements of this Order have been met.

Issued this 19th day of MARCH, 2009.



William A. Spratlin
Director
Water, Wetlands and Pesticides Division
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street
Kansas City, Kansas 66101



Sara Hertz
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 7
901 North Fifth Street

Kansas City, Kansas 66101

CERTIFICATE OF SERVICE

I certify that on the date noted below I hand delivered the original and one true copy of this Findings of Violation and Order for Compliance to the Regional Hearing Clerk, United States Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101.

I further certify that on the date noted below I sent a copy of the foregoing Order for Compliance by first class certified mail, return receipt requested, to:

Knife River Midwest, LLC
900 Montgomery St,
Decorah, Iowa 52101

Mr. Joe Sanfilippo
Iowa Department of Natural Resources
909 West Main Street, Suite 4
Manchester, Iowa 52057

MAR 19 2009

Date

Sender

